THAM CHIN CHOY v. K. MOHAMED ISMAIL & ANOR.

[Orig. Civ. Juris. (Wilson, J.) February 29, 1952]

[Kuala Lumpur — Civil Suit No. 135 of 1951]

Promissory note — Insertion of date after execution with consent of defendant — Limitation — Bill of Exchange Ordinance, 1949, s. 3(4).

A promissory note, payable on demand, was signed by the defendants on 8th February, 1948; at that date it was neither dated nor stamped. At the beginning of October 1948 the plaintiff asked for payment; the first defendant said he had no money and told the plaintiff to have the document stamped. On 6th October, 1948 the plaintiff inserted the date "6th October, 1948" and stamped the document.

Held, that the undated note being payable on demand became payable forthwith and the period of limitation commenced to run from the date of signing, i.e. from 8th February, 1948. As the date "6th October, 1948" was inserted with the consent of the first defendant he must be taken to have agreed to the period of limitation being extended to run from 6th October, 1948.

CIVIL SUIT.

Cur. Adv. Vult.

Wilson, J. : — The plaintiff sues the two defendants jointly and severally on a promissory note for $3,000 bearing the date 6th October, 1948, together with interest thereon. Judgment has already been obtained against the 2nd defendant, and I am only concerned with the liability of the 1st defendant.

The facts which I find to have been proved are as follows :—

In early 1948 the 1st defendant was the proprietor of Hamedia Store, Klang and the 2nd defendant was his manager. The 1st defendant required money for the purposes of the business and obtained a loan from the plaintiff of $3,500. In return he gave the plaintiff a promissory note for $3,000 and a cheque for $500. The promissory note was signed by both the defendants on the 8th February, 1948. It was not dated at that time, nor was it stamped at the time it was signed. The promissory note was payable on demand, but it was not intended by the parties that it should be paid for a period of 6 months or so. For a short period during the year 1948 the 2nd defendant became the proprietor of Hamedia Store, but that, in my opinion, had no bearing on this case. At the beginning of October, 1948 the plaintiff went to the 1st defendant and asked him for payment of the promissory note. The first defendant said he had no money and told the plaintiff that he could have the document stamped and thereafter interest would become payable. On the 6th October, 1948 the plaintiff did have the promissory note stamped after having inserted the date "6th October, 1948" on it. The 1st defendant in his statement of defence alleged that the plaintiff had without the consent or knowledge of the 1st defendant fraudulently filled on the wrong date and thereby materially altered the promissory note. I am quite satisfied that in connection with this transaction the plaintiff has not done anything fraudulently, and I am satisfied that the 1st defendant was agreeable to any date being inserted and so indicated when he informed the plaintiff that he was unable to pay. The 1st defendant also claims that the action is barred by the Limitations Enactment, inasmuch as the promissory note was signed on the 8th February, 1948, and not on the 6th October, 1948, and the suit was not commenced within three years of 8th February, 1948. By reason of section 3(4) of the Bills of Exchange Ordinance, 1949, a promissory note is not invalidated by reason that it is not dated. It is clear that although it was not intended by the parties that the note should be paid for some months after it was signed the fact remains that in law the plaintiff was entitled to payment forthwith on the note being signed. Under the Limitations Enactment it is proved under Part III of the Schedule, Item 55, that the period of limitation on a bill of exchange or a promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue, the period of limitation is three years from the date of the bill or note. That clearly cannot apply to a note which was not dated. Under Item 62 a suit on a bill of exchange, promissory note or bond not expressly provided for the period of limitation commences to run from the time when the note becomes payable. The undated note being payable on demand became payable forthwith, and in my opinion, the period of limitation commenced to run as from the date when the note was signed. That it was not stamped on that date seems to me to be immaterial. The question remains as to whether the period of limitation having commenced to run in February, 1948, the period could be extended by the date of 6th October, 1948, being inserted. In my opinion the date 6th October, 1948 was inserted with the consent of the 1st defendant, if not at his instigation, and therefore he has agreed to the period of

limitation being extended and beginning to run from the 6th October, 1948.

In these circumstances there will be judgment for the plaintiff as prayed.

Judgment for the plaintiff

REX v. LEE KAY LENG.

[App. Crim. Juris. (Spenser Wilkinson, J.) February 29, 1952]

[Penang — Criminal Appeal No. 2 of 1952]

Gaming — Private lottery — Tickets found in possession of non-member — Common Gaming Houses Ordinance, s. 9.

The respondent was found to have in his possession 23 tickets in a Selangor Turf Club lottery; he was not a member of the Club. The lottery was a private one, strictly limited to members of the Club. The respondent was charged with assisting in carrying on a public lottery but was acquitted at the close of the case for the prosecution. The Crown appealed.

Held, that there was no evidence that the respondent had acquired any interest in the tickets or their possible proceeds, either by purchase or as a gift; hence no question arose of there being any subsidiary lottery in progress.

Held further, that the presumption raised under section 9 of the Common Gaming House Ordinance was sufficiently rebutted by specific evidence that the tickets were in a private lottery.

Cases referred to:—

(1) *Kader Batcha v. Public Prosecutor* (1935) M.L.J. 251; (1935) F.M.S.L.R. 18 (C.A.).

(2) *Sahib bin Ali v. Rex* (1939) M.L.J. 281; (1939) S.S.L.R. 212 (C.C.A.).

CRIMINAL APPEAL.

C. M. Sheridan (Federal Counsel) for the Crown.

Lim Kheng Kooi for the respondent.

Cur. Adv. Vult.

Spenser Wilkinson, J.: — The respondent was charged in the Magistrate's Court that on the 29th August, 1951 he was found to be assisting in carrying on a public lottery, an offence under section 4(c) of the Common Gaming Houses Ordinance, or alternatively, that on the same date he was found to have purchased lottery tickets contrary to section 7(1) of the same Ordinance.

At the close of the case for the prosecution in the Magistrate's Court the accused was acquitted on both the main charge and the alternative charge. Against these acquittals the Crown appealed, but the offence charged in the alternative charge being one punishable with a fine only not exceeding $25, there can be no appeal against the acquittal on this charge and my judgment therefore is based upon the respondent having been found not guilty of having purchased lottery tickets.

As far as the appeal regarding the main charge is concerned, the principal evidence was the fact that twenty-three tickets in a Selangor Turf Club Sweepstake were found in the respondent's possession. Evidence was also adduced to show that these particular tickets had been sold by the Club to various members; that the respondent was not a member of the Turf Club concerned; and that the Sweepstake in question was a private lottery, strictly limited to members of the Selangor Turf Club.

The Crown relied upon two decided cases and upon the presumption contained in section 9 of the Common Gaming Houses Ordinance. I will deal first with the arguments based upon the decided cases.

The leading case on this subject is *Kader Batcha v. Public Prosecutor*[1]. In that case the majority of the Court held that the selling of Perak Turf Club Sweep tickets to non-members of the Turf Club did not constitute the whole Sweep a public lottery, but that a member might use such tickets for the purpose of promoting or organising a separate and distinct lottery of his own and that if this were done then the subsidiary lottery was deemed to be a public lottery until the contrary was proved. The principle of this decision was followed by the Court of Appeal of the Straits Settlements in the case of *Sahib bin Ali v. Rex*[2]. It is to be observed that in each of these cases the person prosecuted was the Turf Club member who had passed on either tickets or shares in a ticket to a non-member. I can find no decided case which deals with the position of a non-member to whom Sweep tickets or shares in a Sweep ticket are sold or given.

The following passages from the judgments in these two cases appear to me to be of importance. The first passage is from the judgment of Sir Samuel Thomas, C.J. (*Kader Batcha's Case*[1]) and reads as follows:—

"The moment, therefore, that a person sells a ticket to a member of the ordinary public, i.e. to a person who